REMARKS

At the time of the *Office Action*, Claims 1-36 were pending of which the Examiner rejected Claims 1-36. Applicant has amended Claims 5, 14, 18-27, and 32. Applicant has carefully reviewed the Application in light of the *Office Action* and respectfully requests reconsideration and favorable action in this case.

Section 101 Rejections

The Examiner rejected Claims 19-27 under 35 U.S.C. § 101 as allegedly being directed to non-statutory subject matter. Applicant has amended Claims 19-27 in a fashion whereby the Examiner's rejection under 35 U.S.C. § 101 has been rendered moot. Accordingly, Applicant respectfully requests the Examiner to withdraw the rejection under 35 U.S.C. § 101.

Section 102 Rejections

Claims 1-36 are rejected by the Examiner under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,240,530 to Togawa ("*Togawa*"). Applicant respectfully traverses these rejections for the reasons stated below.

According to the M.P.E.P., "[a] claim is anticipated [under 35 U.S.C. § 102(e)] only if each and every element as set forth in the claim is found either expressly or inherently described in a single prior art reference. § 2131. Applicant respectfully contends that the Examiner has not satisfied this standard because *Togawa* does not disclose "each and every" limitation of claims as explained below.

I.   Figure 13 of *Togawa* does not disclose "determining selected memory blocks that are not scanned in accordance with the determined operating system" as required by Claim 18.

Claim 18 includes the limitations, "code for determining selected memory blocks that are not scanned in accordance with the determined operating system." To reject this limitation, the Examiner merely states, "as shown in Figure 13." See *Office Action*, page 5 (citing *Togawa*, Figure 13). Figure 13 does not support this rejection. More particularly, "FIG. 13 shows in block diagram part of [an] information processing apparatus." See

Togawa, Col. 26, lines 57-58. Applicant respectfully contends that merely pointing to a "block diagram" of an "information processing apparatus" does not disclose the limitations, "determining selected memory blocks that are not scanned in accordance with the determined operating system" as required by Claim 18.

Moreover, the textual description of Figure 13 in *Togawa* does not provide support for the rejection of Claim 18. Thus, Claim 18 is patentably distinguishable from *Togawa* because *Togawa* does not disclose "each and every" limitation of Claim 18 as required the M.P.E.P. § 2131. Moreover, to the extent the Examiner intends to maintain this rejection, Applicant respectfully requests the Examiner to more specifically explain how the text or figures of *Togawa* supports this rejection.

II. Identifying a type of virus as recited in *Togawa* does not disclose "scanning . . . according to a memory layout associated with the determined operating system" as required by Claim 16.

Claim 16 includes the limitations, "code for scanning a memory of the computer system according to a memory layout associated with the determined operating system." The Examiner contends that *Togawa* discloses these limitations and supports this rejection by pointing to sections of *Togawa* which recite, "identifying a type of the computer virus under operation environment of the operating system. . . ." See *Office Action*, page 3 (citing *Togawa*, col. 4, lines 24-66). Applicant respectfully contends that merely "identifying a type of the computer virus" as recited in *Togawa* does not disclose "scanning a memory of the computer system according to a memory layout associated with the determined operating system" as required by Claim 16. Moreover, to the extent the Examiner intends to maintain this rejection, Applicants respectfully request the Examiner to more specifically explain how *Togawa* supports this rejection.

Similar to Claim 16, Claims 7, 25, and 34 each include limitations generally directed to scanning a memory of the computer system according to a memory layout associated with the determined operating system. For reasons similar to those explained above with respect to Claim 16, Applicant respectfully contends that Claims 7, 25, and 34 are in condition for allowance.

III. Merely performing an action "under operation environment of the operating system" as disclosed in *Togawa* does not disclose "scanning for malicious code based on the determined operating system" as required by Claim 1.

Claim 1 includes the limitations, "scanning the computer system for malicious code based on the determined operating system." The Examiner contends that *Togawa* discloses these limitations and supports this rejection by pointing to sections of *Togawa* which recite, "identifying a type of the computer virus under operation environment of the operating system. . . ." See *Office Action*, page 3 (citing *Togawa*, col. 4, lines 52-54). Applicant respectfully contends that merely performing an action "under operation environment of the operating system" does not disclose "scanning . . . for malicious code based on the determined operating system." More particularly, the scan of Claim 1 is based on the operating system determined to be present on the computer system. *Togawa* does not disclose any such limitation. Accordingly, Applicant respectfully contends that Claim 1 and all of its dependent claims are in condition for allowance.

Additionally, Applicant respectfully contends that "identifying a type of virus" as recited in *Togawa*; see *id.*, does not disclose "scanning . . . for malicious code based on the determined operating system" as required by Claim 1.

Similar to Claim 1, Claims 10, 19, and 28 each include limitations generally directed to scanning the computer system for malicious code based on the determined operating system. For reasons similar to those explained above with respect to Claim 1, Applicant respectfully contends that Claims 10, 19, and 28 and each of their dependent claims are in condition for allowance.

IV. Response to Examiner's Response to Arguments

In the *Office Action* the Examiner states, "Applicant's arguments fail to comply with 37 C.F.R. 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentable distinguishes them from the references." See *Office Action* page 2-3. Applicant respectfully disagrees. Applicant's remarks are in compliance with 37 C.F.R. 1.111(b)

because they specifically point out that *Togawa* does not disclose "each and every" limitation of the Applicant's Claims as required by applicable legal authority (e.g., M.P.E.P. § 2131 and relevant case law cited therein).

The Examiner further states, "applicant has argued that that the teachings of *Togawa* fail to disclose of 'scanning the computer system for malicious code based on the determined operating system' and 'identifying a type of the computer virus under operation environment of the operating system by the operating system fetching and starting up step.'" See *Office Action* page 2. Applicant respectfully contends that the Examiner has misconstrued Applicant's argument. In particular, Applicant argues that *Togawa* fails to disclose the limitations of Claim 1 which recite, "scanning the computer system for malicious code based on the determined operating system." However, Applicant does not argue that *Togawa* fails to disclose its own subject matter (i.e., "identifying a type of the computer virus under operation environment of the operating system by the operating system fetching and starting up step.") See *Togawa* Col. 4, lines 52-54.

Additionally, the Examiner states, "[i]n response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., identifying a type of the computer virus under operation environment of the operating system by the operating system *fetching and starting up step*) are not recited in the rejected claims." See *Office Action* page 3. Applicant respectfully disagrees with the Examiner's statement. The language, "identifying a type of the computer virus under operation environment of the operating system by the operating system fetching and starting up step" does not appear in the claims because that is the language from *Togawa* upon which the Examiner relies to maintain his rejection of Claim 1. See e.g., *Office Action*, page 4 (citing *Togawa* lines 24-66). Furthermore, Applicant respectfully objects to any characterization of Applicant's Claims and/or arguments which may be construed as incorporating any subject material from *Togawa* into Applicant's Claims. Applicant does not now and has not ever argued that the subject matter of *Togawa* is part of Applicant's claims.
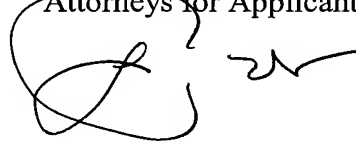
V.   Response to Examiner's Interview Summary

On December 12, 2007, Applicant's representative conducted a telephonic interview with the Examiner, the substance of which is properly reflected in the Interview Summary (form PTOL-413) attached to the *Office Action*.

CONCLUSION

Applicant respectfully submits that this Application is in condition for allowance. For at least the foregoing reasons, Applicant respectfully requests full allowance of all pending claims. If the Examiner feels that a telephone conference would advance prosecution of this Application in any manner, the undersigned attorney for Applicant stands ready to conduct such a conference at the convenience of the Examiner.

Applicant believes no fees are currently due. However, should there be a fee discrepancy, the Commissioner is hereby authorized to charge said fees or credit any overpayments to Deposit Account No. **02-0384 of BAKER BOTTS L.L.P.**

Respectfully submitted,

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